IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TWENTY SIXTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT APPEAL NO : 403 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 26.12.2003 in W.P.No. 26339 of 1995 on the file of the High Court.)

Between:

1 The Government of A.P.rep.by its Secretary, (Irrigation), Irrigation & CAD Department, Secretariat, Hyderabad.
2 The Chief Engineer, Nagarjunasagar Dam, Vijayapuri South, Nagarjunasagar.
3 Executive Engineer, Dam Maintenance Division, Hill Colony, N.S.Dam.

..... APPELLANT(S)

(Respondents)

AND

Nagarjunasagar Dam Employees & Labour Union B-155, Pylon, Vijayapuri North N.S.Dam rep.by its Secretary.

.....RESPONDENT

(Writ Petitioner)

Counsel for the Appellants: ADVOCATE GENERAL

Counsel for the Respondent : MR.V.HARI HARAN AND MR. Y. JAGAN MOHAN

The Court made the following :

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE P.S. NARAYANA

W.A.NO. 403 OF 2004

JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

This is a writ appeal against the judgment of a learned single Judge of this Court in W.P.No. 26339 of 1995 whereby a G.O. issued by the Government was quashed. The parties will be referred to as they are arrayed before the writ court.

Earlier a learned single Judge of this Court in W.P.No. 1090 of 1994, reported in *Telugunadu Workcharged Employees State Federation, Nalgonda District Unit rep. By its President Vs. Government of India, rep. By its Secretary, Ministry of Labour & Employment, New Delhi and others* held,

> "I strike down the impugned provision as being ultra vires the Constitution and consequently the provision contained under Sec. 17 (2) of the Act (Industrial Disputes Act, 1947) to the extent of the words "subject to the

provisions of section 17-A" and whole of Section 17-A with sub-sections 1 to 4 thereof are non est under law."

An appeal was taken against this judgment, which became infructuous as the Government, in the meanwhile, complied with the directions given by the learned single Judge in W.P.No. 1090 of 1994.

In similar circumstances, a G.O. was passed by the Government which was challenged by the present writ petitioner. The learned single Judge, relying on the judgment referred to above, held that since Section 17-A of the Industrial Disputes Act, 1947 had been struck down, therefore the Government had no power to annul the award. The argument made before the learned single Judge of this Court was that since the appeal was dismissed as infructuous, judgment of the learned single Judge was not binding. This argument was not accepted by the learned single Judge while deciding the writ petition. We are in agreement with the opinion of the learned single Judge that the law laid down by this Court in *Telugunadu Workeharged Employees State Federation, Nalgonda District Unit rep. By its President Vs. Government of India, rep. By its Secretary, Ministry of Labour & Employment, New Delhi and others* (1st supra) was a binding precedent. Since Section 17-A of the Industrial Disputes Act, 1947 has been held ultra vires the constitution, the Government had no power to issue the impugned G.O.

A feeble attempt was made by the learned Advocate General to suggest that the law laid down by the learned single Judge in *Telugunadu Workcharged Employees State Federation, Nalgonda District Unit rep. By its President Vs. Government of India, rep. By its Secretary, Ministry of Labour & Employment, New Delhi and others* (1st supra) was not correct law. He relied on a judgment of the Supreme Court reported in *Dharam Dutt and others Vs. Union of India and others* . We do not think that this judgment is in any way helpful to the respondents because Section 17-A of the Industrial Disputes Act, 1947 was considered by the learned single Judge

irrespective of the fact that the judgment of the learned single Judge in *Telugunadu Workcharged Employees State Federation, Nalgonda District Unit rep. By its President Vs. Government of India, rep. By its Secretary, Ministry of Labour & Employment, New Delhi and others* (1st supra) has become final as the writ appeal filed against it became infructuous. But, on the other hand, in a judgment of the Supreme Court which was rendered by a constitution Bench in *P. Sambamurthy and others, vs. State of A.P.* it was observed that under Article 371-D of the Constitution of India certain Administrative Tribunals were created and the proviso to Cl. (5) of Art. 371-D confers power on the State to modify or annul the award of the Tribunal. The Supreme Court dealt it in para-4, which reads as under,

> "4. It is obvious from what we have stated above that this power of modifying or annulling an order of the Administrative Tribunal conferred on the State Government under the Proviso to Cl. (5) is violative of the rule of law which is clearly a basic and essential feature of the Constitution. It is a basic principle of the rule of law that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but must also be in accordance with law and the power of judicial review is conferred by the Constitution with a view to ensuring that the law is observed and there is compliance with the requirement of law on the part of the executive and other authorities. It is through the power of judicial review conferred on an independent institutional authority such as the High Court that the rule of law is maintained and every organ of the State is kept within the limits of the law. Now if the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death knell of the rule of law. The rule of law would cease to have any meaning, because then it would be open to the State Government to defy the law and yet to get away with it. The Proviso to Cl. (5) of Art. 371-D is therefore clearly violative of the basic structure doctrine."

For the reasons given hereinabove, the writ appeal is dismissed. No costs.

BN J.

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PSN J.

Dt. .11.2004

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ASST.REGISTRAR

To

1 The Government of A.P.rep.by its Secretary, (Irrigation), Irrigation & CAD Department, Secretariat, Hyderabad.
2 The Chief Engineer, Nagarjunasagar Dam, Vijayapuri South, Nagarjunasagar.
3 Executive Engineer, Dam Maintenance Division, Hill Colony, N.S.Dam.

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